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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,078	08/10/2006	Martin W. Vanderhoek	V1500007RAJ	7779

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EXAMINER

TSIDULKO, MARK

ART UNIT	PAPER NUMBER
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2875

MAIL DATE	DELIVERY MODE
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07/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/568,078	Applicant(s) VANDERHOEK, MARTIN W.	
	Examiner MARK TSIDULKO	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The submission of amendment filed on 3/17/2008 is acknowledged. At this point claim 1 has been amended, claims 6 and 7 have been canceled, new claims 8 and 9 have been added and the remaining claims left unchanged. Thus, claims 1-5, 8-9 are at issue in the instant application.

Claim Objections

Claim 1 is objected to because of the following informalities: since claim discloses that reflective surface is attached to a rear portion of the vehicle by an attachment mechanism (lines 2, 3) and the attachment mechanism comprises the backup light attached to an upper rear portion of the vehicle (lines 7, 8) it is unclear what and how is attached to what. In addition, it is unclear which way is forward (line 8).

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (US 6,059,418) in view of Chen (US 5,499,169).

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Referring to Claims 1, 4, 9 Edwards discloses (Figs.1-3) a mirror system for a vehicle including a side mirror [22], and a safety mirror (forward viewing mirror [26]) attached to the rear portion of the vehicle by an attachment mechanism (arm extending from housing, not designated by reference character). The mirror [26] has a reflective surface facing toward the side mirror [22], such that the driver sees images from an area adjacent a front portion of the vehicle. While Edwards discloses a safety mirror attached to a lower portion of the vehicle, one having ordinary skill in the art would have recognized that the claimed invention would perform equally well being attached to the upper rear side of the vehicle, because position of the mirror at the upper or lower rear portion of the vehicle does not change the functionality of the system.

Edwards discloses the instant claimed invention except for a backup light on an attachment mechanism.

Chen discloses (Figs.2, 3) a vehicle mirror having a lamp [10] attached to the rear portion of the mirror in order to illuminate the vehicle indicating its location and width (col.1, lines 55, 56) and attachment mechanism [02], attaching the mirror to the vehicle. Being combined with the safety mirror [26] of Edwards, the lamp [10] can also serve as a backup light attached to a rearward facing portion of the mirror [26], this indicates the location and width of the vehicle as it backs up for the traffic behind the vehicle, which increases traffic safety.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to replace the mirror of Edwards with the mirror of Chen. One of ordinary skill would have motivated to replace the mirror of Edwards with the mirror of Chen having the lamp, serving as a backup light, in order to indicate the location and overall size of the vehicle as the vehicle backs up for the traffic behind the vehicle which increases traffic safety. It would

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have been further obvious to locate the backup light of Chen in the attachment mechanism of the mirror, since it has been held that rearranging parts of a prior art structure involves only routing skill in the art. *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

In addition, regarding limitation of claim 9 “mirror for a tractor trailer truck”, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). One of ordinary skill would have recognized that a safety mirror mounted in view of driver would perform equally well being attached to the cab of any type of vehicle, including a tractor trailer truck, because the type of vehicle does not change the functionality of the mirror.

Referring to Claim 3, Edwards discloses (Fig.2) a safety mirror [26] including a housing holding a reflective surface.

Referring to Claim 8, one having ordinary skill in the art would have recognized that the claimed invention would perform equally well being used for any type of vehicle, including a tractor trailer truck having a cab. Regarding the claim recitation that the driver can not see smaller vehicles located adjacent a front portion of the cab, the applicant is advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function.

In re Schreiber, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of Edwards in view

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of Chen discloses (as detailed above) all the structural limitations required to perform the recited functional language.

Claims 2, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards in view of Chen, as applied to claim 1 above, and further in view of Backenkohler (US 4,139,269).

Referring to Claim 2, Edwards in view Chen discloses the instant claimed invention except for a convex mirror.

Backenkohler discloses (Fig.1) a vehicular mirror [1] having a convex surface [2] in order to obtain a wide-angle view. It is well known that there is a blind spot, which lies diagonally rear of the driver and can not be seen from the inside or outside mirror without the driver having to look around. However, turning to view the blind spot involves the danger of driving blindly in the direction of travel. The convex mirror yields an excellent broad field of view so that by situating it in the field of view of the side windows, the region of the blind spot is completely covered.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the mirror device of Edwards with a backup light of Chen, having a convex reflective surface, as taught by Backenkohler, in order to eliminate the existence of blind spots for the purpose of increasing the traffic safety.

Referring to Claim 5, Edwards in view Chen discloses the instant claimed invention except for a pivotal connection.

Backenkohler discloses (Fig.1) a reflective portion pivotally connected to the attachment mechanism.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the mirror device of Edwards with a backup light of Chen, pivotally attached to the attachment mechanism, as taught by Backenkohler, in order to obtain view in various directions.

Response to Arguments

Applicant's arguments filed 3/17/2008 have been fully considered but they are not persuasive.

Applicant argues that cited prior art does not disclose a safety mirror, which employs a backup light as an attachment mechanism for mounting the safety mirror to the vehicle.

In response, this recitation is not a part of claimed limitations. As cited in claim 1 “the attachment mechanism comprises the backup light (see line 7).

Applicant argues that forward viewing mirror of Edwards requires a separate attachment mechanism. Edwards discloses in Figs.1-3 an attachment mechanism (arm) extending from the housing of the mirror and does not disclose that this structure requires a separate attachment mechanism.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571) 272-2384. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Sandra L. O'Shea/
Supervisory Patent Examiner, Art Unit
2875

/M.T./

May 29, 2008

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